

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
Charleston Division

MERINDA PHOLWATTANA,

Plaintiff,

Civil Case No.: 2:10-0989

(Civil Action No. 10-C-1191-K,
Removed from Kanawha Co.)

BARCLAY BANK,
WORLD FINANCIAL NETWORK NATIONAL BANK
and ALLIANCE DATA SYSTEMS,

Defendants.

**DEFENDANT WORLD FINANCIAL NETWORK
NATIONAL BANK'S MOTION TO DISMISS**

COMES NOW defendant World Financial Network National Bank pursuant to Rule 12(b) of the Federal Rules of Civil Procedure and move this Honorable Court to dismiss the Complaint, as to this defendant. In support of this motion, this defendant submits the following:

1. Defendant World Financial Network National Bank is a wholly owned subsidiary of Alliance Data Systems Corp. and is a national banking association governed by the National Bank Act.

2. West Virginia Code section 46A-2-128(e) is preempted by the federal National Bank Act and regulations promulgated thereunder by the Office of the Comptroller of Currency because it impairs the express authority of a national bank as provided in 12 C.F.R. § 7.4008(d)(2).

3. Alternatively, West Virginia Code section 46A-2-128(e) is preempted by the federal National Bank Act and regulations promulgated thereunder by the Office of

the Comptroller of Currency because it more than incidentally affects the lending operations of a national bank under 12 C.F.R. § 7.4008(e).

WHEREFORE, as West Virginia Code section 46A-2-128(e) is preempted by federal law, plaintiff has failed to state a claim upon which relief may be granted against this defendant, and the Complaint should be dismissed, as to it, with prejudice.

WORLD FINANCIAL NETWORK
NATIONAL BANK,

By Counsel.

/s/ David M. Kersey
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CERTIFICATE OF SERVICE

I, David M. Kersey, counsel for defendant World Financial Network National Bank in the above-styled civil action, hereby certify that on 5th day of August 2010, I electronically filed DEFENDANT WORLD FINANCIAL NETWORK NATIONAL BANK'S MOTION TO DISMISS with the Clerk of this Court using the CM/ECF system which will send notification of such filing to CM/ECF participants, and by the United States Postal Service to non-CM/ECF participants:

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/s/ David M. Kersey
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